

**SUPPLEMENT TO PETITION FOR DECLARATORY RULING UNDER SECTION 310(B)(4) OF THE  
COMMUNICATIONS ACT OF 1934, AS AMENDED,  
FILED BY COLOMBO TOPCO LIMITED ON AUG. 24, 2018**

**IBFS FILE NO. ISP-PDR-20180824-00003**

This Supplement to the petition for declaratory ruling filed with the Federal Communications Commission (“FCC” or “Commission”) on August 24, 2018, by Colombo Topco Limited (“Colombo” or “Petitioner”)<sup>1</sup> responds to an information request from the Commission staff (“Request”).<sup>2</sup> The Petition requested, *inter alia*, a determination from the Commission that it would not serve the public interest to prohibit indirect foreign ownership of Colombo and its subsidiaries of up to 100 percent. The Request is composed of three questions, each of which is answered below.

***1. The Petition indicates that ownership of 3i Group plc is widely dispersed and does not identify any person or entity as having a controlling interest.***

- ***Please supplement the Petition with a statement as to whether any person or persons, individually or acting as a group, possess de facto control, including positive or negative control, of 3i Group, including as a result of any supermajority or special voting rights or otherwise.***

3i Group plc is a public limited company whose stock is listed on the London Stock Exchange (Ticker III).<sup>3</sup> No person or persons, individually or acting as a group, possess *de facto* control, including positive or negative control, of 3i Group, including as a result of any supermajority or special voting rights or otherwise. As set forth in the Petition, Artemis Investment Management, LLP (“Artemis”) held a direct 5.4 percent voting and equity interest; Threadneedle Asset Management Ltd. (“Threadneedle”) held a direct 5.4 percent voting and equity interest; and Blackrock, Inc. held a direct 8.4 percent voting and equity interest, in each

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<sup>1</sup> Colombo Topco Limited, Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, As Amended (filed Aug. 24, 2018) (“Petition”). The Petition was filed by Colombo pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, and Section 1.5000(a)(1) of the Commission’s rules. *See* 47 U.S.C. § 310(b)(4), 47 C.F.R. § 1.5000(a)(1). The Petition was placed on public notice as acceptable for filing on October 15, 2018. *See* Public Notice, *Non Streamlined International Applications/Petitions Accepted for Filing*, Report No. TEL-01929NS at 2-3 (IB rel. Oct. 15, 2018). Colombo filed a supplement to the Petition on October 11, 2018 to clarify the Petition’s scope. Letter from Kathleen Abernathy (Counsel for Colombo) and K.C. Halm (Counsel for Tampnet Inc.) to Tom Sullivan (Chief, FCC International Bureau) (filed Oct. 11, 2018) (“Supplement”).

<sup>2</sup> Email from Susan O’Connell (Attorney Advisor, Telecommunications & Analysis Division, FCC International Bureau) to Phillip Marchesiello (Counsel for Colombo) (Nov. 16, 2018).

<sup>3</sup> *See* Petition at 6-7.

case in 3i Group as of the end of 3i Group's most recently completed fiscal year, March 31, 2018.<sup>4</sup> No other person held an equity or voting interest in 3i Group in excess of five percent.

As with U.S. corporations, 3i Group is controlled by a board of directors who are elected by the 3i Group shareholders, and all shareholders have *pro rata* voting rights. According to 3i Group's Annual Report and Accounts for 2018, "[t]here are no shares carrying special rights with regard to control of the Company."<sup>5</sup> Further information about 3i Group's corporate governance can be found in its Annual Report and Accounts.<sup>6</sup>

**2. *Petitioner requests advance approval for certain named foreign individuals and foreign-organized entities that would hold non-controlling interests in Colombo Topco Limited (Colombo) to increase their aggregate interest in Colombo, at some future time, up to and including a non-controlling 49.99% indirect equity and voting interest in Colombo.***

- ***Please clarify whether Petitioner's request for advance authority includes authority for such foreign individuals and entities to increase their aggregate interests in Colombo, either individually or collectively, up to and including a direct or indirect non-controlling 49.99% equity and voting interest in Colombo.***

Petitioner requests advance authority for the foreign individuals and entities that are listed in Section III(11) of the Petition, and are repeated below, each to *individually* increase its *individual* interests in Colombo and its subsidiaries<sup>7</sup> at some future time to an aggregate direct and/or indirect voting and/or equity interest of up to 49.99 percent.<sup>8</sup>

- Arbejdsmarkedets Tillaegspension ("ATP")
- 3i Infrastructure plc ("3i Infrastructure")
- Schroders plc
- Artemis
- Threadneedle

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<sup>4</sup> See Petition at 9-10.

<sup>5</sup> 3i Group plc, Annual Report and Accounts 2018 at 86 (May 16, 2018), available at <https://www.3i.com/media/3557/3i-group-ar-2018.pdf> (current through March 31, 2018).

<sup>6</sup> *Id.* at 84-89.

<sup>7</sup> If the proposed transaction is consummated, Colombo's subsidiaries will include Colombo Holdco Limited, Colombo Bidco Limited, Brent Holding AS, Brent Invest AS, Tampnet AS, Tampnet Inc., Tampnet Licensee LLC, Tampnet Holdco Inc., and Tampnet USA LLC. In the Supplement, Petitioner clarifies that the Petition also seeks advance authority for Colombo Topco Limited, Colombo Holdco Limited, Colombo Bidco Limited, Brent Holding AS, Brent Invest AS, and Tampnet AS each to hold an *individual* 100 percent indirect equity and voting interest in Tampnet Inc., which is the domestic parent company of FCC common carrier wireless licensees Tampnet USA LLC (indirectly through Tampnet Holdco Inc.) and Tampnet Licensee LLC. See Supplement at 5-6.

<sup>8</sup> See Petition at 12-13.

- Per Helge Svensson
- Coachit AS
- Trygve Hagevik
- Socc AS
- Anders Tysdal
- Ansoma AS
- Arnt Erlink Skavdal
- Arnin AS

Petitioner also requests advance authority for certain other foreign entities listed in Section III(11) of the Petition each to *individually* increase its *individual* interest in Colombo and its subsidiaries at some future time to an aggregate direct and/or indirect voting and/or equity interest of up to 100 percent.<sup>9</sup> (Upon Commission approval and consummation of the proposed transaction, each of these entities will hold a Commission-approved indirect controlling interest in Colombo and its subsidiaries.)

- 3i Group plc
- 3i Holdings plc
- 3i plc
- 3i Investments plc

Finally, Petitioners request advance authority for *any combination* of the foreign individuals and entities set forth in the two lists above to *collectively* hold up to a 100 percent direct and/or indirect voting and/or equity interest in Colombo and its subsidiaries at some future time, provided that none of the individuals and entities in the first list set forth above *individually* holds an aggregate direct and/or indirect voting and/or equity interest in Colombo above 49.99 percent.

***3. The Petition states that, following consummation of the proposed transaction, certain managers and executives of the Tampnet Companies will be issued Colombo stock, with none individually expected to hold a 5% or greater interest in Colombo. At the same time, Petitioner requests specific approval for certain of these managers and their personal investment vehicles that may hold a voting interest in Colombo approaching 5% (as well as the advance authority referenced in Item 2 above).***

***Please provide a showing to establish whether, under U.K. law and Colombo’s governance documents, Colombo is comparable to a U.S. (i) a limited liability company; (ii) a limited partnership; or (iii) a privately held corporation.***

Colombo is a limited company under United Kingdom law, which is the equivalent of a corporation under U.S. law. Therefore, the Commission should treat Colombo as a corporation for purposes of the Commission’s foreign ownership calculation procedures and attribution rules. The similarity in name between a U.K. “limited company” and U.S. “limited liability company”

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<sup>9</sup> See Petition at 12-13.

(“LLC”) is mere happenstance and should have no bearing on the Commission’s treatment of Colombo.

Historically, both U.K. and U.S. law have recognized two primary types of commercial business organizations—partnerships and corporations.<sup>10</sup> The characteristics of U.S. corporations and U.K. limited companies differ from those of partnerships in the same way: U.S. corporations and U.K. limited companies both are legal entities that are distinct from their owners; they both also share four other core characteristics: “(1) limited liability, (2) transferable shares, (3) centralized management under a board, and (4) shared ownership by contributors of capital.”<sup>11</sup>

The U.S. LLC is a relatively new hybrid business form that bears characteristics of both partnerships and corporations.<sup>12</sup> In contrast, U.K. private limited companies are not hybrid entities.<sup>13</sup> They instead are equivalent to closely held U.S. corporations for all effective purposes. For example:

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<sup>10</sup> See, e.g., *The Origins Behind the Limited Liability Company*, 59 Ohio St. L.J. 1459 at 1484-85 (1998) (“At America’s beginnings, only two business forms existed: the general partnership, which requires no formal sovereign recognition, and the corporation, which has always required formal recognition by a sovereign person or government”) (“*LLC Origins*”); see also Wikipedia, the Free Encyclopedia, United Kingdom company law, at [https://en.wikipedia.org/wiki/United\\_Kingdom\\_company\\_law](https://en.wikipedia.org/wiki/United_Kingdom_company_law) (last visited Dec. 4, 2018) (providing, *inter alia*, a history of U.K. company law).

<sup>11</sup> *Approaching Comparative Company Law*, 14 Fordham J. Corp. & Fin. L. 83 at 125-130 (2008) (discussing the fundamental similarities of U.K. “company” law, which governs U.K. limited companies, and Delaware General Corporation Law, which is a primary law governing U.S. corporations because “most major U.S. corporations ... are incorporated under the law of the State of Delaware”).

<sup>12</sup> LLCs were statutorily created by new state laws in the late 1970s and became popular in the United States in the 1990s and 2000s. See *LLC Origins* at 1463-69; *Review of the Commission’s Regulations Governing Attribution of Broadcast Interests*, Notice of Proposed Rulemaking, 10 FCC Rcd 3606, ¶ 64 (1995) (characterizing LLCs “as a relatively new form of business association permitted and regulated by statute in at least 45 states”) (“NPRM”). LLCs were developed to combine the limited liability of owners provided to corporations with the tax pass-through characteristics of partnerships. *Id.* at 1459-60; NPRM, ¶ 64 (describing an LLCs as being “intended to afford limited liability to members, similar to that afforded by the corporate structure, while also affording the management flexibility and flow-through tax advantages of a partnership, without many of the organizational restrictions placed on corporations or limited partnerships”).

<sup>13</sup> After significant consideration of the matter, the FCC determined nearly twenty years ago that LLCs “are similar to partnership forms in terms of organizational flexibility,” and therefore decided to “treat them comparably for attribution purposes.” See *Review of the Commission’s Regulations Governing Attribution of Broadcast Interests*, Report and Order, 14 FCC Rcd 12559 ¶ 140 (1999); *id.* ¶¶ 134-140 (determining to treat LLCs as limited partnership for attribution purposes); see also, NPRM ¶¶ 64-75 and the public comments filed in this Commission

- *Distinct Legal Entity.* U.S. corporations and U.K. limited companies are legally distinct and autonomous entities relative to the individuals who formed or own them. Ownership is assigned based on initial capital contributions and memorialized via shares that are freely transferable and represent equal voting, profit, and capital distribution rights (absent an agreement among shareholders revising these statutory defaults). Like U.S. corporations, U.K. limited companies maintain an independent and perpetual continuity of existence irrespective of the identity of their shareholders. By contrast, the owners of LLCs and limited partnerships generally are individually memorialized in their formation agreements, which agreements dictate the transferability of such interests.
- *Management by a Board of Directors.* U.S. corporations and U.K. limited companies are required by law to be managed by boards of directors elected by their stockholders, and these boards, in turn, appoint officers who are responsible for the day-to-day operation of the companies. By contrast, like limited partnerships, LLCs have a great deal of flexibility regarding their management structures. They may be managed by their members or by non-member managers, and they not required to have directors and/or officers.
- *Entity-Level Taxation.* As distinct legal entities separate from their shareholders, U.S. corporations and U.K. limited companies generally are taxed at the entity level before profits are distributed to shareholders as dividends. Dividends are then taxed again at the shareholder level. By contrast, LLCs may choose not to be taxed at the entity level and instead generally are taxed like limited partnerships. Thus, LLCs generally pass their profits through to their members and such profits only are taxed as personal income of the members.

In addition, as a limited company, Colombo resembles almost all publicly traded companies in the U.K., in the same way that almost all public traded companies in the U.S. are corporations. As a private limited company under U.K. law, Colombo's corporate status is the same as a privately-held U.S. corporation. No other business form under U.K. law fulfills this role. Consequently, if the Commission were to treat a private U.K. limited company as a U.S. LLC rather than a U.S. corporation, then the Commission effectively would be determining that U.K. law does not provide for a closely held corporate business structure with the attributes of a private U.S. corporation.

Of course, U.S. and U.K. business laws provide business organizations with significant flexibility to modify through agreement the default governance procedures created for such business organizations under applicable statutes.<sup>14</sup> Nevertheless, the Commission generally

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proceeding (MM Docket Nos. 94-150, 92-51, 87-154). No such consideration is required with respect to U.K. limited companies because they are not hybrid entities and instead are distinct from limited partnerships.

<sup>14</sup> The primary statute governing U.K. limited companies is the Companies Act of 2006. U.S. corporations (as well as U.S. LLCs and limited partnerships) primarily are regulated at the state level, although corporations (especially publicly traded corporations) also are regulated at the

relies on the type of business entity (i.e., corporation, LLC, or limited partnership) to determine the entity's treatment for purposes of attribution and the procedures that should be used to calculate its foreign ownership.<sup>15</sup> Consequently, because a limited company is the U.K. equivalent of a U.S. corporation, Colombo should be treated as a corporation for purposes of determining the disclosure requirements applicable to the Petition.

The primary significance of treating Colombo as a corporation, rather than an LLC, is that such treatment obviates the need for Colombo to publicly disclose the identity and ownership interests of certain managers and executives of Tampnet Inc., Tampnet Licensee LLC, and Tampnet USA LLC (collectively "Tampnet Companies") who will be assigned small interests (i.e., significantly less than five percent) in Colombo following consummation of the proposed transaction.<sup>16</sup> The exact managers and executives who will receive such interests and the size of each individual's interest have not been, and are not expected to be, publicly disclosed by Colombo. These managers and executives individually will have *de minimis* voting rights in Colombo relative to Colombo's dominant shareholders (ATP and 3i Infrastructure), which effectively will make the managers and executives passive interest holders. In addition, they will not hold any special or unique voting rights, individually or collectively, relative to ATP and 3i Infrastructure. Consequently, there is no reason to deviate here from the Commission's general policy not to require disclosure in a Section 310(b) petition for declaratory ruling of corporate shareholders holding less than a five percent interest in the petitioner.<sup>17</sup>

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federal level under the Securities Act of 1933, the Securities and Exchange Act of 1934, and other subsequent federal securities laws.

<sup>15</sup> The FCC does not require the filing of, or undertake an analysis of, each closely held corporation's articles of incorporation and bylaws to adjudicate whether it should be treated as a corporation or an LLC/limited partnership. Similarly, the Commission does not review an LLC's membership agreement to determine whether a particular LLC should be regulated as a limited partnership or a corporation. There is no reason to take a different approach here.

<sup>16</sup> See Petition at 6, 8. Those managers and executives of the Tampnet Companies who may be assigned voting or equity interests in Colombo that could approach five percent were identified in the Petition. *Id.* at 8, 10-12.

<sup>17</sup> See 47 C.F.R. §§ 1.5001(i)(1) (establishing a 5% ownership disclosure threshold for Section 310(b) petitions applicable to common carrier wireless licensees), 1.5001(b)(1)-(2) (establishing procedures to determine the size of a corporate shareholder's ownership interest).

Please do not hesitate to direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

/s/ Kathleen Q. Abernathy

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